FILE COPY

Office - Supreme Court, U. S.
FILED
MAR 4 1937
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. [redacted] 9

NOLEN R. BREEDLOVE,

Appellant,

vs.

T. EARL SUTTLES, TAX COLLECTOR.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA.

MOTION TO DISMISS OR AFFIRM.

CHAS. B. SHELTON,
RALPH H. PHARR,
W. S. NORTHCUTT,
Counsel for Appellee.

INDEX.

Subject Index.

	Page
Motion to dismiss or affirm	1

Table of Cases Cited.

Breedlove v. *Suttles, Tax Collector,* Southeastern Reporter, Advance Sheets of December 10, 1936	3
Seaboard Air Line Railway Co. v. *Watson,* 287 U. S. 86, 77 L. Ed. 180	4
Sugarman v. *United States,* 249 U. S. 182, 63 L. Ed. 550	3

Statutes Cited.

Rules of the Supreme Court of the United States, Rule 9, 286 U. S. 599, 76 L. Ed. 1310	3
Rules of the Supreme Court of the United States, Rule 12, subparagraph (c), 286 U. S. 602, 76 L. Ed. 1312	2
Rules of the Supreme Court of the United States, Rule 12, subparagraph 1, adopted March 2, 1936, effective on or after July 1, 1936, 297 U. S. 734, 80 L. Ed. 1415	2, 3

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 777

NOLEN R. BREEDLOVE,

Appellant,

vs.

T. EARL SUTTLES, TAX COLLECTOR,

Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA.

APPELLEE'S MOTION TO DISMISS OR AFFIRM.

Now comes T. Earl Suttles, as Tax Collector of Fulton County, Georgia, the appellee in the above and foregoing appeal, and respectfully submits this motion to dismiss the appeal sought to be taken by Nolen R. Breedlove, as appellant, to the judgment of the Supreme Court of Georgia in the above entitled case, and in opposition to the noting of jurisdiction of the appeal, reserving his right to make subsequent motion to dismiss upon other grounds as provided by the Rules of this Honorable Court, and respectfully moves to dismiss the appeal and affirm the judgment of the

Supreme Court of Georgia sought to be reviewed upon each of the following grounds:

I.

Because the jurisdictional statement purporting to disclose the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment or decree in question does not disclose the date of the judgment or decree sought to be reviewed and the date upon which the application for appeal is presented, as required by subparagraph (c) of paragraph one of Rule 12 of the Rules of the Supreme Court of the United States as amended, 286 U. S. page 602, 76 L. Ed. page 1312.

II.

Because the jurisdictional statement purporting to disclose the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment or decree in question does not contain "pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears, * * * as will support the assertion that the rulings of the court were of a nature to bring the case within the statutory provision believed to confer jurisdiction" on this Honorable Court as required by amendment to subparagraph 1 of Rule 12 of the Rules of the Supreme Court of the United States adopted March 2, 1936, effective on or after July 1, 1936, 297 U. S. page 734, 80 L. Ed. 1415.

III.

Because the jurisdictional statement purporting to disclose the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to

review the judgment or decree in question does not include "a copy of the opinions delivered upon the rendering of the judgment or decree sought to be reviewed" (although appellant's statement discloses that said opinion covers all or parts of four pages of the Southeastern Reporter Advance Sheet of December 10, 1936; see page 2, appellant's jurisdictional statement), as required by the amendment to subparagraph 1 of rule 12 of the Rules of the Supreme Court of the United States adopted March 2, 1936, effective on or after July 1, 1936, 297 U. S. page 734, 80 L. Ed. 1415.

IV.

Because the appellant did not file with the clerk of the court below, with his petition for appeal, an assignment of errors which sets out separately and particularly each error asserted, and no such assignment of errors accompanies the petition, as required by Rule 9 of the revised Rules of the Supreme Court of the United States as amended (286 U. S., page 599, 76 L. Ed. page 1310).

In connection with this ground of the motion to dismiss, appellee respectfully submits that none of the alleged assignments of error incorporated by plaintiff point out or disclose any reason why it is alleged that the errors claimed to have been committed by the Supreme Court of Georgia deprive appellant of any constitutional right.

"Mere reference to a provision of the Federal Constitution, or the mere assertion of a claim under it, does not suffice." *Sugarman,* Plaintiff in Error, v. *United States of America,* 249 U. S. 182, 63 L. Ed. 550.

Neither the first nor the second alleged assignments of error incorporated by the appellant contain any semblance of an effort to assign error of any kind. Neither the third, fourth, fifth and sixth assignments of error point out

wherein the constitutional rights of appellant are alleged to have been violated in any particular. In each case there is a "mere reference to a provision of the Federal Constitution," or a "mere assertion of a claim under it" without any statement of any reason why any constitutional right sought to be invoked by the appellant is alleged to have been violated in any particular.

With respect to the seventh assignment of error incorporated by appellant, attention is called to the fact that appellant does not claim in this assignment to have been denied any right to vote at any election of any kind. The complaint sought to be asserted by appellant in the seventh assignment of error is at most a complaint with respect to the alleged unequal distribution of the tax burden and the alleged consequent effect thereof. This so-called assignment of error is substantially the same as the assignment of error held by the Supreme Court of the United States in the case of *Seaboard Air Line Railway Co.* v. *Watson,* 287 U. S. pages 86-92, 77 L. Ed. 180, to be "so lacking in particularity as to present no question for consideration."

V.

In his petition for appeal appellant asserts that appellee took no issue on any matter connected with said suit, except only the question as to the constitutionality of the constitutional provision challenged by appellant, and because appellant asserts also in his petition for appeal that the sole issue determined by the decision of the case was the constitutionality of the constitutional provision and laws referred to in the original petition, whereas the record discloses that the case was dismissed upon an oral motion to dismiss the petition which challenged the right of the petitoin to the relief sought upon any grounds whatsoever.

WHEREFORE, appellee prays that the appeal be dismissed, and that the judgment of the Supreme Court of the State of Georgia be affirmed.

CHAS. B. SHELTON.
RALPH H. PHARR.
W. S. NORTHCUTT.

Address:
504 First National Bank Bldg., Atlanta, Ga.